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In re Application of
MCBURNEY, Robert, et al.
U.S. Application No.: 09/530,884
PCT No.: PCT/US98/21349
International Filing Date: 08 October 1998
Priority Date: 14 October 1997
Attorney's Docket No.: 04585/048002
For: THERAPEUTIC METHODS COMPRISING
USE OF A NEUREGULIN

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DECISION ON PETITION
TO REVIVE ABANDONED
APPLICATION UNDER 37
CFR 1.137(b)
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This decision is issued in response to applicants' "Petition To Revive Application Under 37 CFR 1.137(b)" filed on 05 May 2000. Applicants have paid the required petition fee.

BACKGROUND

On 08 October 1998, applicants filed international application PCT/US98/21349 which claimed a priority date of 14 October 1997 and which designated the United States.

On 22 April 1999, a Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of 19 months from the priority date. As a result, the deadline for submission of a copy of the international application (unless previously communicated by the International Bureau) and payment of the basic national fee was extended to expire 30 months from the priority date, i.e., 14 April 2000.

On 05 May 2000, applicant filed the Petition To Revive, with accompanying materials.

DISCUSSION

37 CFR 1.137(b) permits the filing of a petition to revive an abandoned application where the abandonment resulted from an unintentional delay. A grantable petition under this section must include: (1) the required reply, unless previously filed; (2) the petition fee required by law; (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional;" and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c).

Regarding item (1), the "required reply," section 711.03(c) of the Manual of Patent Examining Procedures states that:

[g]enerally, the required reply is the reply sufficient to have avoided abandonment, had such reply been timely filed.

Here, a copy of the international application was not required because the international application was filed in the United States Receiving Office. The "required reply" was therefore payment of the basic national fee. The Petition To Revive was accompanied by a check in the amount of \$1,152, which included \$670 as the basic national fee. Thus, applicants have made a submission which would have been "sufficient to have avoided abandonment" had it been made in a timely manner, that is, on or before 14 April 2000. Accordingly, applicants have submitted the "required reply." Item (1) is satisfied.

Item (2) is the petition fee required under 37 CFR 1.17(m). The Petition to Revive was accompanied by a check in the amount of \$1,210 for the petition fee. Item (2) is satisfied.

As for item (3), the Petition to Revive expressly states that:

the delay was unintentional and that the petition is being filed promptly after the application became abandoned.

This statement in the Petition to Revive is construed as being the statement required by 37 CFR 1.137(b)(3), that is, a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional." Applicants **must** notify this Office if this is **not** a correct interpretation of these statements. Based on this interpretation of the statement contained in the Petition to Revive, item (3) under 37 CFR 1.137(b) is satisfied.

Under the terms of 37 CFR 1.137(c), the terminal disclaimer listed as item (4) above is not required for this application. Applicants have therefore satisfied all the requirements for a grantable petition under 37 CFR 1.137(b). The Petition to Revive is granted.

CONCLUSION

Applicants' Petition to Revive is **GRANTED**.

This application is being forwarded to the National Stage Processing Branch of the International Division for further processing in accord with this decision, including mailing a Notification Of Missing Requirements (Form PCT/DO/EO/905) requiring the submission of an

executed declaration and payment of the surcharge for filing the declaration after the 30 month deadline.



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